

REMARKS

The applicants have carefully considered the Office action dated March 16, 2010. By way of the forgoing amendments, claim 1 has been amended to clarify the claim recitations. Claims 2, 3, and 7 have been amended to correct antecedent basis. Claim 4 has been canceled without prejudice. No new subject matter has been added, as support for the amendments to claim 1 may be found, for example, in the application as originally filed at paragraph [0056].

Thus, claims 1-3, 5-7, 9, 10, 13-29, and 31 are pending and at issue. Of the claims at issue, claim 1 is an independent claim.

In view of the foregoing amendments and the following remarks, reconsideration of the application is respectfully requested.

The Rejection under 35 U.S.C. § 112

The claims stand rejected under 35 U.S.C. § 112 as being indefinite for failing to particularly point out and distinctly claim the subject matter regarded as the invention. Claims 1, 2, 3, and 7 have been amended to correct antecedent basis. Claim 4 has been canceled to avoid double inclusion of the base cap.

The foregoing should eliminate any rejection under 35 U.S.C. §112 that may have been proper.

The Rejections under 35 U.S.C. § 103

Independent claim 1 stands rejected as being unpatentable over Bisgaard (US 4,545,491) in view Brown (US 2004/0118801). It is respectfully submitted that all claims are allowable over these patents for at least the reasons set forth below.

As amended Independent claim 1 is generally directed to a bottle having a pre-stressed diaphragm air valve. In particular, claim 1 recites, *inter alia*, a bottle comprising an air valve in

the manner of a flap valve, wherein the base cap comprises a central elevated portion (see, for example, *application as filed*, p. 8, 4th para.; stating “To design the diaphragm in the manner of a flap valve, ...”). Furthermore, as recited, a sealing lip is provided at an inner end region of the diaphragm, which is angled relative to a base-cap-adapted course of the diaphragm, such that in a closed position of the air valve only an inner end portion of the diaphragm abuts on the central elevated portion of the base cap in a pre-stressed state (see, for example, *application as filed*, p. 18, last para.: “Moreover, the diaphragm 14 is circular-ring-shaped, ...”).

The amendments highlight that the pre-stressed state of the diaphragm 14, when inserted into the base cap 8, is achieved with the sealing lip 20, which is angled relative to the base-cap-adapted course of the diaphragm. These features are also apparent from a comparison between Fig. 4, which shows the diaphragm 14 inserted in the base cap 8, and Fig. 3 illustrating the diaphragm 14 apart from the base cap 8. Upon insertion into the base cap 8, the angled inner end region of the diaphragm is pressed upwardly, such that the membrane 14 is positioned in the base cap in a pre-stressed state.

As amended, claim 1 also defines that the circular-ring-shaped diaphragm 14 and central elevated portion 16 yield an air valve in the manner of a flap valve. The free end of this flap valve, i.e. the inner sealing lip 20, is moved from a closed position abutting on the central elevated portion 16 to an open position lifted from the central elevated portion 16 in the event that a certain pressure is applied. This arrangement both increases the likelihood of a secure seal in the closed position and an easy, sensibly reacting opening of the air valve 13, which is facilitated by the circular-ring-shape of the diaphragm 14.

Thus, a comparatively large and sensibly reacting air valve 13 is attained, which largely prevents the danger of a collapse of the teat 9 despite the reduced wall thickness of the teat 9 in

the lip contacting region 22 and the nipple 23. The air valve 13 defined in amended claim 1 is thus designed specifically to allow for the particular shape of the teat 9.

It is well established, that the prior art must teach or suggest each of the claim elements ... to establish a *prima facie* case of obviousness. See *In re Oetiker*, 24 USPQ. 2d 1443, 1446 (Fed. Cir. 1992); *Ex parte Clapp*, 227 USPQ. 972, 973 (Bd. Pat. App. 1985); *In re Royka*, 490 F.2d 981 (CCPA 1974) and M.P.E.P. § 2143. None of Bisgaard or Brown, either alone or in combination, describes the sealing lip or circular ring-shaped diaphragm as recited in amended claim 1. Accordingly, it follows that none of Bisgaard or Brown, either alone or in combination, can render obvious claim 1 or any claims dependent thereon.

In contrast, Bisgaard describes a feeding bottle 2 with a bottom cap 8 having an upwardly projecting central portion 10. A resilient rubber sleeve 12 of cylindrical shape abuts on the central portion 10 to provide an air intake valve. Thus, the sleeve 12 is cylindrical rather than circular-ring-shaped as recited in claim 1. Furthermore, as can be clearly seen from Fig. 2, for example, in its closed position, the rubber sleeve 12 contacts the central portion 10 with its full circumference.

According to the present claims, however, the inner end region of diaphragm forms a sealing lip, which is angled with respect to an otherwise base-cap-adapted course of the diaphragm. The claimed features assure that the air valve is already lifted into the open position when only a comparatively small underpressure is applied. This makes it possible to closely imitate the natural feeding of infants (see, for example, *application as filed*, p. 3, last para. and p. 4, 1st para.).

Brown, meanwhile fails to teach or suggest any of the recitation introduced to amended claim 1. Furthermore, Brown fails to teach or suggest that the bottle jacket has a substantially

conical shape widening from the teat-side end region to the bottom-side end region. Specifically, according to one group of embodiments, Figs. 1-3 and Fig. 5, the baby bottle of Brown has an essentially spherical shape, whereas the embodiments of Figs. 4, 8 and 9 provide for a generally cylindrical shape. In either instance, none of these embodiments teach or suggest the presently claimed bottle with the bottle jacket widening from the teat-side end region to the bottom-side end region to have sufficient space for a comparatively large air valve.

Consequently, none of the cited references provide for a baby bottle that simulates the infant's natural food intake. In particular, as described in the present application, the bottle as recited in claim 1 can advantageously achieve the simulation of the natural food intake because the provided baby bottle has a teat with a thin wall thickness in the lip-containing region. This thin wall thickness, however, is possible with the pre-stressed diaphragm of the bottom air valve as defined in amended claim 1, as otherwise the teat would likely collapse.

Therefore, due to the deficiencies in each of the cited references, it follows that no combination of Bisgaard or Brown can render obvious claim 1 or any claims dependent thereon. In particular, because none of the references teaches or suggests either a circular ring-shaped diaphragm forming a flap valve, or a sealing lip angled relative to diaphragm such that in a closed position of the air valve only an inner end portion of the diaphragm abuts on the central elevated portion of the base cap in a pre-stressed state as recited in amended claim 1, no combination of the cited references can render claim 1 unpatentable. Accordingly, it is respectfully submitted that claim 1 and all claims dependent thereon are in condition for allowance.

Conclusion

Reconsideration of the application and allowance thereof are respectfully requested. If there is any matter that the examiner would like to discuss, the examiner is invited to contact the undersigned representative at the telephone number set forth below.

The Commissioner is hereby authorized to charge any deficiency in the amount enclosed or any additional fees which may be required during the pendency of this application to Deposit Account No. 12-0400.

Respectfully submitted,
Ladas & Parry LLP
224 South Michigan Ave.
Suite 1600
Chicago, Illinois 60604

Dated: July 14, 2010

/Keith R. Jarosik/

Keith R. Jarosik
Reg. No. 47,683
Attorney for Applicants
(312) 427-1300